XI-HC—78

(18)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक CRA NO 8734 सन् 200 1

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	APPELLANT: **(In Jail)**	**Beko Dhurva, son of Beko Kooma, Madiya, aged 42 years, resident of Raikot Gudrapara, Police Station Kodenar, District Bastar (Chh.G.)**
	-Versus-	
	RESPONDENT:	**State of Chhattisgarh, Through: P.S. Kodenar, Distt. Bastar.**

(Appeal under Section 374 (2) of the Code of Criminal Procedure, 1973)

Division Bench: - Hon'ble Shri L.C. Bhadoo &
Hon'ble Shri Dhirendra Mishra, JJ.

25-4-2007:-

Shri Ratindra Mishra, counsel for the appellant.

Shri Akhil Mishra, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais*.

L.C. Bhadoo, J.

This appeal is directed against the judgment of conviction and order of sentence dated 2-5-2001 passed by the 4th Additional Sessions Judge, Jagdalpur in S.T. No.374/2000 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life & to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for 6 months.

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आदेश पत्रक (पूर्वानुबद्ध)

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	The case of the prosecution, in brief, is that as the wife of Beko Kosa had died 10 years before, therefore, he brought Tule Bai (since deceased) to his residence, as his wife, along with 3 children which she was having from the former husband, which was not liked by accused Beko Dhurva. Beko Dhurva used to say to his cousin brother Beko Kosa as to why he has brought 3 children along with Tule Bai. On 30-6-2000 at about 4 p.m. the accused started quarrelling with Beko Kosa, he rushed towards him to attack him but he ran away. Thereafter, the accused attacked Tule Bai (since deceased) because she was saying to the accused as to why he is attacking her husband which infuriated the accused. He attacked her on her head, as a result of which she fell down and blood started oozing out of the injury. She succumbed to the injuries. The accused ran away from the place. Beko Kosa informed village Kotwar Ramu. Next day morning villagers came and saw the body of Tule Bai. Thereafter, Beko Kosa reported the matter on 1-7-2000 in the police station Kodenar. V. S. Chandel (PW-6), Station House Officer, registered FIR Ex.-P/4 and merg intimation Ex.-P/12. He left for scene of occurrence, prepared site plan Ex.-P/13. He also prepared inquest Ex.-P/5 on the body of the deceased. The body of the deceased was sent for postmortem examination to the Primary Health Centre, Bade Kilepal under Ex.-P/1-A on 2-7-2000 where Dr. T.S. Nag, (PW-1) conducted postmortem and opined that cause of death was shock and haemorrhage on account of the fracture of the skull bone. His report is Ex.-P/1. While in the police custody the accused gave memorandum Ex.-P/6, in pursuance of that, he got recovered wooden club under Ex.-P/7.	

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After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate, 1st Class, Jagdalpur, who in turn committed the case to the Sessions Judge, Jagdalpur from where learned Additional Sessions Judge received the case on transfer.

The prosecution examined 6 witnesses at the trial. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied material appearing against him in the prosecution evidence.

Learned 4th Additional Sessions Judge after hearing learned counsel for the respective parties, convicted and sentenced the accused as aforementioned.

We have heard learned counsel for the parties.

Learned counsel for the accused/appellant has not disputed homicidal death of the deceased. Moreover, Beko Kosa has categorically stated that the accused attacked the deceased with club on her head, as a result of which she succumbed to the injuries. PW-1 Dr. T.S. Nag who conducted postmortem on the body of the deceased has stated that there were 2 injuries on the head, as a result of which skull bone was fractured, membrane of the brain was ruptured, cause of death was shock and haemorrhage, death was homicidal in nature, therefore, in view of the above, it is established that the death of the deceased was homicidal in nature.

As far as involvement of the accused/appellant in the crime in question is concerned, PW-2 Beko Kosa, husband of Tule Bai (since

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आदेश पत्रक (पूर्वानुबद्ध)

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deceased) has categorically stated that on the fateful evening he and his wife were at their residence. The accused came with a club and attacked the deceased with club on her head, as a result of which she fell down and succumbed to the injuries. Thereafter, he fled from the scene of occurrence. The above evidence of this witness is corroborated by the medical evidence. In cross-examination of this witness, defence has not been able to elicit any circumstance which discredit evidence of this witness, rather this witness has not been cross-examined on the aspect of witnessing the accused assaulting his wife. Therefore, involvement of the accused in the crime is established.

Learned counsel for the accused/appellant argued that the accused and husband of the deceased are brothers. As the accused was unhappy with his brother as to why he has brought children of the deceased along with her, therefore, he started quarrelling with Beko Kosa. When the deceased tried to intervene, he attacked her also without intention to cause her death, therefore, offence against the accused does not travel beyond Section 304 Part-II of the I.PC.

On the other hand, learned counsel for the State/respondent supported the judgment of the trial Court.

The undisputed facts of the case are that the accused was unhappy with his brother on the ground that as to why he has brought 3 children of Tule Bai along with her and on that account there was quarrel. On the fateful day Beko Kosa ran away whereas, Tule Bai tried to intervene in between them, in a fit of anger, the accused attacked the deceased saying that why she is intervening, in that process, she sustained fatal injury and

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	died. Therefore, from the above facts, it emerges that the prosecution has not been able to establish that the accused attacked Tule Bai with intention to cause her death. However, the manner in which the accused attacked the deceased with club on her head, it can safely be inferred that the accused had knowledge that by attacking the deceased with club on her head, he may likely to cause the death, therefore, offence against the accused under Section 304 Part II of the I.P.C. is made out. Accordingly, conviction and sentence imposed upon the accused under Section 302 of the I.P.C. cannot be sustained. In the result, the appeal filed by the accused/appellant partly succeeds. Conviction and sentence imposed upon him under Section 302 of the I.P.C. are set aside, instead thereof, he is convicted under Section 304 Part-II of the I.P.C. and sentenced to undergo R.I. for 8 years. It is stated that the accused is in detention since 2-7-2000 till today, therefore, the accused/appellant shall be entitled for set off for the above detention period against the sentence imposed upon him. Sd/- L.C.BHADOO Judge	Sd/- Dhirendra Mishra Judge
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